

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BUCKEYE COMMUNITY HOPE FOUNDATION, et al., } No. 16 C 4430  
Plaintiffs, } Chicago, Illinois  
-vs- } February 26, 2017  
VILLAGE OF TINLEY PARK, et al., } 8:50 o'clock a.m.  
Defendants. }

TRANSCRIPT OF PROCEEDINGS - MOTION/STATUS  
BEFORE THE HONORABLE MILTON I. SHADUR

## APPEARANCES:

For the Plaintiffs:

SARGENT SHRIVER NATIONAL CENTER  
ON POVERTY LAW  
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and  
HOLLAND & KNIGHT  
BY: MR. CHRISTOPHER J. MURDOCH  
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## 1 APPEARANCES: (Cont.)

2 For the Defendants: KOZACKY WEITZEL McGRATH, P.C.  
3 BY: MR. ALASTAR S. McGRATH  
4 MR. JEROME R. WEITZEL  
5 55 West Monroe Street  
6 Suite 2400  
7 Chicago, Illinois 60606  
8 and  
9 QUERREY & HARROW, LTD.  
10 BY: MR. BRANDON K. LEMLEY  
11 175 West Jackson Boulevard  
12 Suite 1600  
Chicago, Illinois 60604

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25 For the Intervenor Plaintiff: HON. ZACHARY T. FARDON  
United States Attorney, by  
MR. MICHAEL J. KELLY  
MS. AMIE S. MURPHY  
Assistant United States Attorney  
219 South Dearborn Street  
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1                   THE CLERK: 16 C 4430, Buckeye versus Village of  
2 Tinley Park.

3                   MS. MURPHY: Hi. This is Amie Murphy with the  
4 United States.

5                   THE CLERK: 16 C 4430, Buckeye versus Village of  
6 Tinley Park.

7                   THE COURT: Counsel has identified herself out in  
8 telephone land. Would you all do the same here in court,  
9 please.

10                  MR. MURDOCH: Your Honor, my name is Chris Murdoch.  
11 I represent the plaintiff.

12                  MS. WALZ: Katherine Walz. I represent the  
13 plaintiff.

14                  MR. KELLY: Mike Kelly for the United States.

15                  MR. McGRATH: Alastair McGrath on behalf of the  
16 defendants.

17                  MR. WEITZEL: Jerome Weitzel on behalf of the  
18 defendants.

19                  MR. LEMLEY: And Brandon Lemley on behalf of the  
20 defendants.

21                  THE COURT: Good morning. As you know, I have put  
22 the media to shame -- I sound like the current  
23 administration, right -- in the characterization that the two  
24 lawsuits were to be merged, which they have not, but it still  
25 seems to me that it is useful maybe up front just to get a

1 brief report on the progress of the case in which the United  
2 States has sued so that I think that that casts some light at  
3 least on ours. So might I have that first, please.

4 MR. McGRATH: Alastair McGrath. I believe, your  
5 Honor, we filed, Buckeye -- sorry, the Village of Tinley Park  
6 has filed a motion to dismiss. Judge Ellis has put together  
7 a briefing schedule on the motion to dismiss, and I believe  
8 it is set for ruling in early July, is what she set it for.

9 THE COURT: Well, I guess my guess was wrong. But  
10 in any event tell me -- tell me now about how our posture on  
11 the current one. First, what is the situation on the  
12 financing in terms of the -- our controversy remaining as a  
13 live one with a potential for the project as contrasted with  
14 a dispute about whether it is actionable in damages? Tell  
15 me.

16 MR. MURDOCH: Your Honor, I have to apologize, as I  
17 don't have up-to-the-minute information on that. The last  
18 time I spoke to the client on that topic, which was about two  
19 weeks ago, was that they are still intending to pursue the  
20 project and they are not yet giving up the idea of getting  
21 tax credits and converting this to a claim for damages.

22 THE COURT: Okay. So on that score tell me what  
23 the situation is in that regard. What have you done in terms  
24 of traveling down the discovery path on our action?

25 MR. MURDOCH: I think --

1                   THE COURT: Both sides.

2                   MR. McGRATH: Your Honor, I think -- I have talked  
3 a lot with Mr. Wardenski. I don't think he is able to be on  
4 the phone today, but I did talk to him yesterday. He is one  
5 of the attorneys for Buckeye. We have proposed a schedule  
6 that I think was sent to your Honor with the idea that we  
7 have worked on right now written discovery. We have set some  
8 deadlines for ourselves for written. We have also set some  
9 ideas for how long we would like oral discovery to take. And  
10 I think then we got have dispositive motions laid out, with  
11 an idea I believe of -- we have kind of agreed on if Buckeye  
12 is still going to pursue building tax credits, we would  
13 probably be looking at a trial of next February or so,  
14 somewhere in that neck of the woods.

15                  So we have kind of outlined something that we think  
16 could be successful towards getting all the discovery --

17                  THE COURT: The internal aspects.

18                  MR. McGRATH: Yes.

19                  THE COURT: Yes.

20                  MR. McGRATH: So that is kind of what was sent to  
21 your Honor. There was an original one that was sent a couple  
22 days ago. Then we had another conversation yesterday which  
23 was really just with regard to possibly setting --

24                  THE COURT: Wait, wait. Somebody sent me  
25 something?

1                   MR. McGRATH: I believe there was a proposed  
2 discovery order, your Honor. It was e-mailed to chambers  
3 yesterday. I think it was e-mailed.

4                   THE COURT: I didn't get it, but I don't set those,  
5 you know.

6                   MR. LEMLEY: Your Honor, it was sent to the  
7 proposed, underscore, order, underscore Shadur at Illinois --

8                   THE COURT: Whatever happened to paper? You know,  
9 if you look at my website, you would see that -- I am a fan  
10 of paper. And if it is a cost of business, if lawyers can  
11 afford making copies less than the Government can, that is  
12 news to me. I just don't -- I really don't understand that.

13                  MR. McGRATH: Well, my apologies, your Honor.

14                  THE COURT: There is no sense in my walking into  
15 court ignorant of something that has been put in the stream  
16 by counsel without delivery.

17                  Many years ago there was a novel written about  
18 Lincoln's lost speech in which the author's concept was that  
19 all speech is out there somewhere in what used to be called  
20 the ether -- no longer of course -- and that it was somehow  
21 retrievable. Well, that is true today, I guess, but it is --  
22 but it is out of phase with my preference. And as I have  
23 said, I think to you people as well as everybody else, our  
24 Court talked about this a long time and we decided that it  
25 was going to be dealer's choice.

1           If you look at LR 5.2(f), you will see that it says  
2 that the -- sets as the norm the delivery, but it says that  
3 -- it makes plain that any judge can make a determination if  
4 they like to keep their desk clean and spoil their eyes, they  
5 can do that. As you can see, I don't need glasses, although  
6 I started with them I guess a zillion years ago.

7           But in any event if you have agreed upon some kind  
8 of scheduled internally, you may certainly keep it to  
9 yourself. And I have no -- I am not going to memorialize it.  
10 I am not going to set deadlines. Instead I am going to  
11 continue to set reasonable intervals for reporting like this.  
12 And if you -- and if and to the extent you want to provide me  
13 with that material, I am not going to, as I say, memorialize  
14 it. I will look at it, obviously.

15           So with that said, given the internals that you  
16 have shared but not with me, what would you suggest as a  
17 sensible next status date?

18           MR. McGRATH: Well, your Honor, I think what we  
19 have put out there is internally the middle of July for the  
20 end of fact witness depositions. So probably sometime around  
21 the middle of July would probably make the most sense I  
22 think.

23           THE COURT: Okay. That is fine with me. As you  
24 might guess, it is wide open, right?

25           You can have either of two weeks. When you talk

about the middle, one is the 10th through the 14th, the next one is the 17th through the 21st. Eight of those days you can have 9:00 o'clock. Two days, the Wednesdays, the 12th and the 19th, you could have 9:15, if that is your preference. So I am perfectly happy to honor whatever you tell me.

7 MR. McGRATH: How about -- I am sorry, your Honor,  
8 I missed it. The week of the 10th.

9 MR WIETZEL: The 10th, 11th.

THE COURT: 10th through the 14th.

11 MR. McGRATH: How about the 11th, your Honor?

12 THE COURT: Tuesday the 11th?.

13 MR. McGRATH: That would be great, your Honor.

14 THE COURT: Thank you.

15 MR. MURDOCH: Thank you.

16 MR. LEMLEY: Thank you, your Honor.

17 THE COURT: Thank you all.

18 (which were all the proceedings heard.)

# CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

23 | s/Rosemary Scarpetti/

Date: April 21, 2017